

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 13
)	
CHERYL HOLIDAY)	CASE NO. 13-76998-MHM
)	
Debtor)	
- - - - -)	- - - - -
)	
CHERYL HOLIDAY)	
)	
Movant)	
)	
v.)	CONTESTED MATTER
)	
BANK OF AMERICA HOME LOANS,)	
)	
Respondent)	

ORDER AND NOTICE ON STRIP LIEN MOTION

On January 31, 2013, Debtor filed an *Amended Motion to Determine Secured Status of Claim and to Strip Lien* held by Bank of America (Doc. No.) ("Motion"). In the Motion, Debtor alleges:

- Debtor's real property and residence is 6420 Wedgewood Trace, Tucker Georgia 30084. (the "Property").
- The fair market value of the Property is \$30,900.00 based upon an appraisal performed by the tax assessor, evidence of which is attached as Exhibit A to the motion.
- Select Portfolio Servicing ("First Lender") holds a first priority lien in the amount of \$98,064.00. First Lender has not filed a proof of claim.

- Bank of America ("Junior Lender") holds a second priority lien in the amount of \$19,071.00, and has not filed a proof of claim.
- Debtor alleges the Junior Lender's lien is wholly unsecured.

The Motion is available for review in the office of the Clerk, U.S. Bankruptcy Court between 8:00 a.m. and 4:00 p.m. or online anytime at <http://ecf.ganb.uscourts.gov> (registered users) or at <http://pacer.psc.uscourts.gov> (unregistered users). It is hereby

ORDERED that any person or party who objects to entry of **the order attached as Exhibit "A,"** granting the relief sought in the Motion:

1. **Must file** a written objection, stating the grounds therefor, on or before the close of business¹ _____ 201__, with

Clerk, U. S. Bankruptcy Court
1340 U. S. Courthouse
75 Spring Street, S.W.
Atlanta, Georgia 30303-3367;

2. **Must serve** a copy of said objection upon Debtor's attorney:

Rob Rickman
RICKMAN & ASSOCIATES, PC
1325 Satellite Blvd, Suite 1406
Suwanee, Georgia 30060

so that such written objections are actually received by Debtor's attorney on or before the deadline set forth in Paragraph 1; and

3. **Must advocate** the objection at the hearing on the Motion .

If objections are filed, hearing on the Motion will be held before the undersigned in Courtroom 1204, United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia 30303, on __ October 17th _____, 2014, at __ 1:45 __ o'clock __p.m.

¹ Objections filed electronically may be filed up to 11:59:59 p.m. All other objections must be filed

Any objection not timely filed, served, and advocated at the hearing set above shall be deemed waived, and the proposed order attached to this order as Exhibit “A” may be entered without further notice or hearing. It is further

ORDERED that, on or before _____, 2014, Debtor’s attorney shall serve a copy of this Order and Notice upon Debtor, First Lender, Junior Lender, and the Chapter 13 Trustee, and shall file a certificate of such service within three days thereafter.

IT IS SO ORDERED, this the _____ day of _____, 2014.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

Prepared by:
Dan Saeger
Georgia Bar No. 680628
RICKMAN & ASSOCIATES, PC
1325 Satellite Blvd, Suite 1406
Suwanee, Georgia 30060
(P) 678-500-9546
(F) 678-391-4422
bk@thegeorgialawfirm.com

Attorney for Debtor

by delivery to the Clerk's Office at or before 4:00 p.m.

“EXHIBIT A”

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 13
)	
CHERYL HOLIDAY)	CASE NO. 13-76998-MHM
)	
Debtor)	
-----)	-----
)	
CHERYL HOLIDAY)	
)	
Movant)	
)	
v.)	CONTESTED MATTER
)	
BANK OF AMERICA HOME LOANS,)	
)	
Respondent)	

**PROPOSED
ORDER ALLOWING JUNIOR LIEN AS UNSECURED CLAIM**

On January 31, 2013 Debtor filed an *Amended Motion to Determine Secured Status of Claim and to Strip Lien* seeking to strip the lien held by Bank of America

Home Loans (“Bank of America Home Loans” or “Junior Lender”) (Doc. No. 26) (“Motion”). An Order and Notice regarding the Motion was entered [date] (Doc. No.____) (“Notice”). Debtor contends that Bank of America Home Loan’s claim is completely unsecured because no value exists in the residential real property of Debtor located at 6420 Wedgewood Trace, Tucker, GA 30084 (the “Property”) to which its junior lien can attach. Therefore, Bank of America Home Loan’s claim is unsecured and its lien may be deemed *void* upon entry of Debtor’s discharge or completion of Debtor’s plan pursuant to 11 U.S.C. Sections 506(d) and 1322(b)(2). *See In Re Tanner*, 217 F. 3d 1357 (11th Cir. 2000); *In Re Tran*, 431 B.R. 230, 235 (Bankr. N.D. Cal. 2010); *In Re Felicien*, Case No. 11-50587-MHM (Doc. No. 46) (Bankr. N.D. Ga., October 11, 2011); *In Re Jennings*, 454 B.R. 252 (Bankr. N.D. Ga. 2011) (J. Mullins). Debtor and the record show that the holder of the first priority lien, Select Portfolio Servicing, claims a secured debt in the amount of \$98,064.00, which amount exceeds the value of the Property, \$30,900.00. Therefore, it is appropriate to value the lien of Bank of America at zero for purposes of confirmation of Debtor’s Chapter 13 plan and to classify and treat its claim as a general unsecured claim. Bank of America Home Loan, Junior Lender, failed to oppose the Motion in writing, so that, pursuant to the Notice, its lack of opposition and for good cause shown, it is hereby

ORDERED that the claim of Bank of America Home Loans is *disallowed* as secured, *allowed* as unsecured, and shall be treated accordingly under Debtor’s Plan. Upon completion of Debtor’s Chapter 13 plan, Debtor may seek by motion in this case an order avoiding the Chase lien. It is further

ORDERED that, should this chapter 13 case be dismissed, the lien of Bank of America Home Loans shall not be affected by this Order.

[END OF DOCUMENT]

Prepared by:
Dan Saeger
Georgia Bar No. 680628
RICKMAN & ASSOCIATES, PC
1325 Satellite Blvd, Suite 1406
Suwanee, Georgia 30024
(P) 678-500-9546
(F) 678-391-4422
bk@thegeorgialawfirm.com

Attorney for Debtor

Certificate of Service

I, **Dan Saeger**, certify that I am over the age of 18 and that on **January 2, 2014**, I served a copy of the foregoing **Order and Notice Regarding Strip Lien Motion** by first class U. S. Mail, with adequate postage prepaid on the following persons or entities at the addresses stated below. Respondent has been served by Certified Mail in accordance with Fed. R. Bankr. P. 7004(b)(3) and 7004(h) respectively.

Cheryl Holiday
Debtor
6420 Wedgewood Trace
Tucker, GA 30084

Adam M. Goodman
Adam M. Goodman
Chapter 13 Trustee
Suite 200
260 Peachtree Street
Atlanta, GA 30303

Bank of America Home Loans
CEO Kevin Watters
3415 Vision Drive
Columbus, OH 43219

Bank of America Home Loans
PO Box 650070
Dallas, TX 75265-0070

Bank of America Home Loans
4161 Piedmont Parkway
Greensboro, NC 27410

Select Portfolio Servicing
3815 S West Temple Street
Salt Lake City, UT 84115

Select Portfolio Servicing, Inc.

CEO - Mr. Matt Hollingsworth
3815 S. West Temple
Salt Lake City, UT 84115-4412

This 31st day of January 2014.

/s/ Dan Saeger

DAN SAEGER

Counsel for Movant

Georgia Bar Number 680628

RICKMAN & ASSOCIATES, PC

1325 Satellite Blvd, Suite 1406

Suwanee, Georgia 30024

(P) 678-500-9546

(F) 678-391-4422

bk@thegeorgialawfirm.com